

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF SEVIER RIVER DECREE)
)
AWARDS TO KOOSHAREM IRRIGATION COMPANY)
)
AND MERIDIAN DITCH COMPANY)

MEMORANDUM DECISION

On September 12, 1978, the State Engineer conducted a hearing at the Koosharem Town Hall in Koosharem, Utah. The purpose of the hearing was to gather information and documentation on the historical distribution of the waters of Otter Creek, specifically related to Koosharem Irrigation Company and Meridian Ditch Company.

The Sevier River Decree, on page 25, awards the Koosharem Irrigation Company as follows:

Two-tenths (2/10ths) of the waters of Otter Creek, measured at the mouth of Daniels Canyon; also sufficient of the waters of Otter Creek, measured below the reservoir of the Koosharem Irrigation Company and above its headgate, to aggregate, together with said two-tenths (2/10ths) of the waters of Otter Creek, for use during the entire year, not to exceed 18.00 cfs.

Also on page 25, the Decree awards the Meridian Ditch Company as follows:

One-tenth (1/10th) of the waters of Otter Creek, measured at the mouth of Daniels Canyon; also sufficient of the waters flowing above the dam of said company which, including the above mentioned one-tenth (1/10th) of the Waters of Otter Creek, will aggregate, a maximum of 10.00 cfs from April 15th to June 15th and during the remainder of each and every year a maximum of 6.00 cfs.

Both irrigation companies approached the State Engineer several times during the 1978 irrigation season to get an interpretation on exactly how much water each company was entitled to under the decree. The specific problem is the wording in the Meridian Ditch award stating "also sufficient of the waters flowing above the dam of said company....will aggregate" which is not specific as to what the word "above" encompasses. This was basically the purpose of the hearing.

The State Engineer has on file a transcript of the proceedings of the hearing along with copies of the exhibits presented by each party.

According to testimony presented by the Koosharem Irrigation Company, the historical distribution has been to release downstream from the Koosharem Irrigation Company headgate a constant flow of 1.50 cfs. during the irrigation season. This flow of 1.50 cfs. was Meridian Ditch Company's entitlement of the flow from Otter Creek. The amount to be released to the Meridian Ditch Company was apparently determined in a study by the Sevier River Commissioner. LaRue Ogden, some time during the early 1940's. However, there has not been any written

evidence found to verify the extent of the study.

The Meridian Ditch Company contends that the decree is not vague and that they should be entitled to include all waters upstream of their diversion to aggregate together with the one-tenth (1/10th) from Otter Creek in Daniels Canyon to make up their maximum decreed flow.

The State Engineer has reviewed the testimony and exhibits presented at the hearing and also the claims presented to the court by each Irrigation Company at the time the Sevier River Decree was formed. Based on this information, it is the opinion of the State Engineer that the following distribution of the waters of Otter Creek be adhered to by the Koosharem Irrigation Company and Meridian Ditch Company:

1. That three-tenths (3/10ths) of the waters of Otter Creek, as measured at the mouth of Daniels Canyon, be delivered into the ditch which empties into Koosharem Reservoir as is presently being done.
2. That a measuring device be installed in the mentioned ditch immediately upstream from where the ditch enters the reservoir. This measuring device would be used to determine any seepage loss occurring in the ditch between the mouth of Daniels Canyon and the reservoir.
3. That the Koosharem Irrigation Company release from the reservoir three-tenths (3/10ths) of the flow from Otter Creek less corresponding seepage losses as measured into the reservoir.
4. A measuring device shall be installed immediately downstream of the Koosharem Reservoir dam on Otter Creek to accurately measure out the three-tenths (3/10ths) flow less the same seepage losses as measured into the reservoir (i.e. the three-tenths flow into the reservoir equals the three-tenths flow out of the reservoir).
5. At the Koosharem Irrigation Company diversion from Otter Creek, Koosharem Irrigation Company shall bypass to Meridian Ditch Company the one-tenth (1/10th) portion of the flow as measured out of the reservoir. The Koosharem Irrigation Company may divert the remaining two-tenths (2/10ths) of the flow plus any accretions to the stream above their diversion and below the reservoir dam not to exceed 18.0 cfs.
6. Measuring devices and adequate diversion structures shall be installed at the point where the water is diverted from Otter Creek by the Koosharem Irrigation Company to facilitate an accurate division of the water between the two companies.
7. The Meridian Ditch Company shall install a diversion structure and a measuring device at the point where they divert the water from Otter Creek. The Meridian Ditch Company shall be allowed to divert the one-tenth (1/10th) division of water as measured at the Koosharem Irrigation Company diversion together with any water which may aggregate between the Koosharem Irrigation Company diversion and the Meridian Ditch Company diversion from Otter Creek, not to exceed the maximum flows as stated in the Decree.

8. Any water which may be flowing down Otter Creek that is in excess of each company's respective decreed rights shall be allowed to continue downstream and shall not be diverted.

9. The Koosharem Irrigation Company and the Meridian Ditch Company shall not be allowed to store in the Koosharem Reservoir any of those waters computed to be part of the original three-tenths (3/10ths) direct flow from Otter Creek as measured at the mouth of Daniels Canyon.

10. All expenses incurred for installation and purchase of measuring devices shall be paid by the two irrigation companies.

This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate district court within sixty days from the date hereof.

Dated this 16th day of January, 1979.


Dee C. Hansen, State Engineer

DCH:MSA:dvg

Mailed a copy of the foregoing Memorandum Decision this 16th day of January, 1979, to:

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